

REMARKS

I. Status of Claims

Claims 1 and 8 are pending in the application.

Claim 1 is amended to recite that the water-in-oil emulsion in the container prior to jetting is a liquid or gel. Support for the claim amendment can be found, for example, at paragraph [0009] of the specification.

No new matter is added, and the claim amendment places the application in condition for allowance, or reduces issues on appeal. Accordingly, Applicants respectfully request entry and consideration of the Amendment after a final Office Action.

II. Response to Claim Rejection Under 35 U.S.C. § 103(a)

Claims 1 and 8 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Gupta (U.S. Patent Application Publication No. 2003/0019888) in view of Matsuda et al. (U.S. Patent No. 5,773,073) and Hotta et al. (U.S. Patent Application Publication No. 2002/0182303).

Applicants respectfully traverse, at least for the following reasons.

Claim 1 is directed to a foamable water-in-oil type emulsion in combination with an aerosol container. The emulsion comprises an emulsifier in the amount of 0.5 to 6.0 wt% based on the emulsion, the oil in the water-in-oil type emulsion is an edible oil which has a cloud point (ASTM) of about 4.4°C (40 °F) or lower, the container comprises a gas propellant partially dissolved in said water-in-oil emulsion, and the water-in-oil emulsion in the container prior to jetting is a liquid or gel. The container also has a discharging nozzle for discharging the emulsion with the gas propellant as a mousse form therefrom. The mousse is formed at the time of jetting, and the emulsifier consists of at least one member selected from the group consisting

of monoglycerin fatty acid ester, sucrose fatty acid ester, sorbitan fatty acid ester, and polysorbate. The monoglycerin fatty acid ester, if included, is in the range 2.5-3.0 parts by weight based on the emulsion.

Thus, in the presently claimed invention, the emulsion present in the container before jetting is in the form of a “liquid or gel,” thereby excluding the case wherein the contents in the container is already in mousse form. Additionally, present Claim 1 also recites that “the mousse is formed at the time of jetting.” Taking the above two limitations in combination, the emulsion contained in the container as recited in claim 1 of the instant application is in the form of liquid or gel and changes into a mousse upon jetting, which clearly distinguishes the presently claimed invention from that of Gupta. As the Examiner agrees, Gupta includes a mousse or foam already contained in the container which is discharged as such.

In other words, the presently claimed invention is characterized in that, when the emulsion, which is in the form of *liquid or gel* inside the container, is jetted (discharged) from the container, the propellant partially dissolved in the emulsion becomes a gas, which in turn converts the emulsion from a liquid or gel *into* a mousse. This conversion from a liquid or gel into a mousse is fundamentally different from the invention described in Gupta. Gupta neither teaches nor suggests changing a liquid or gel into a mousse upon jetting (discharge), which is quite apparent from the fact that Gupta uses a piston as a partition. In other words, the substance present in Gupta is simply discharged in the same form as it was present in the container. Thus, the presently claimed invention is not taught or suggested by Gupta.

Based on the elements of the presently claimed invention, the presently claimed invention can provide a novel mousse-type spread or mousse-type edible oil, which has excellent convenience, excellent safety, and excellent properties, including new mouth-feel and flavor, and

which are not encountered in the conventional spread and edible oil. See, e.g., paragraph [0022] of the specification. Thus, the presently claimed invention is not obvious based on the cited references.

With regard to the Examiner's assertion that "the present claims only require that the food be capable of forming a mousse when discharged from the container, which is clearly the case with Gupta" (OA, page 5, paragraph 8), Applicants respectfully disagree. **Claim 1** of the instant application requires the composition be water-in-oil type emulsion inside the container and form foam when discharged from the container. Thus, **there is transformation of the product from an emulsion to a foam or a mousse**. However, in Gupta, as the **propellant exists in a separate space from the product and merely pushes the space containing the product, there is no transformation of the status** of the product by the action of the gas propellant. That is, if an water-in-oil emulsion is contained in the container of Gupta, the discharged product is also a water-in-oil emulsion.

Furthermore, Applicants disagree with the Examiner's contention that "in order for the materials to be a mousse or a foam the food must be in the presence of a propellant/gas, otherwise the materials that discharge from the container would be liquids or solids which does not make sense." As discussed above, the container taught by Gupta is not an aerosol container, and when the product contained in the container is liquid or gel, the product is discharged from the container as liquid or gel, because the propellant is never in contact with the product and there is no transformation of the status of the product upon discharge.

Additionally, Gupta does not disclose the elements that the Examiner appears to rely on. While it is true that gas is required for the material to be discharged as a mousse or foam, the material in the invention described to Gupta is already in the form of mousse when it is filled in

the container. Gupta does not disclose changing the form of the material present in the container into mousse from a different form upon discharge from the container. For example, at paragraphs [0042] and [0097] of Gupta, it is described that “nonlimiting examples of products which might be residing in upper product containing chamber 131 include oil-in-water emulsions, foams, mousses...” Similarly, Claim 16 of Gupta discloses “wherein a product is positioned in the upper chamber, and wherein the product is selected from the group consisting of ... foams... mousses...” No where in Gupta is a disclosure that the material contained in the container is in an emulsion and changes into foams or mousse when it is discharged from the container.

Additionally, as discussed in Applicants’ previous response of November 30, 2010, **Gupta clearly requires separation of a product to be dispensed from the container and a propellant.** Indeed, Gupta states it provides measures to protect against any leakage of propellant into the product, and vice versa. For example, at paragraph [0066], Gupta states

of sealing fins **300** less 1. These one or more buffer chambers **132** provide an extra measure of protection against any leakage of propellant into the product, and visa versa. Additionally, these one or more buffer chambers **132** also allow piston **200** to traverse small dents, surface irregularities, imperfections, or other anomalies, with a measure of protection against leakage of propellant into the product, and visa versa.

None of Matsuda and Hotta cure the above-discussed defects. That is, the combined teachings of Gupta, Matsuda and Hotta do not teach each and every element of currently pending claim 1. Accordingly, Claim 1 is patentable over the combination of Gupta and Matsuda. Claim 8 is also patentable, at least by virtue of its dependence from Claim 1. Accordingly, Applicants respectfully request reconsideration and withdrawal of the § 103(a) rejection of Claims 1 and 8.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

/Sunhee Lee/

Sunhee Lee
Registration No. 53,892

/Debodhonyaa Sengupta/

Debodhonyaa Sengupta, Ph.D.
Limited Recognition No. L0578

SUGHRUE MION, PLLC
Telephone: (202) 293-7060
Facsimile: (202) 293-7860

WASHINGTON DC SUGHRUE/265550

65565

CUSTOMER NUMBER

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